

**Internal Revenue Service**

Appeals Office  
55 North Robinson Ave.  
Stop 8000 OKC  
Oklahoma City, OK 73102

**Department of the Treasury****Taxpayer Identification Number:****Person to Contact****Tax Period(s) Ended:****UIL: 501.03-22****Release Number: 201251022****Release Date: 12/21/2012****Date: September 28, 2012****ORG****ADDRESS****Certified Mail****ORG:**

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code effective January 1, 2005.

The revocation of your exempt status was made for the following reason(s):

The organization did not substantiate it operated exclusively for exempt purposes. Because the organization could not substantiate it met the operational test, the organization is not operated exclusively for exempt purposes described in section 501(c)(3) of the Code.

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit [www.irs.gov](http://www.irs.gov).

If you were a private foundation as of the effective date of revocation, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

You have waived your right to contest this determination under the declaratory judgment provisions of Section 7428 of the Code.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely Yours,

Charles Fisher  
Appeals Team Manager

**DEPARTMENT OF THE TREASURY**  
INTERNAL REVENUE SERVICE TE/GE EO Examinations  
230 S. Dearborn, 17<sup>th</sup> Floor, MC 4929-CHI  
Chicago, IL 60604

**Date:** May 14, 2010

ORG  
ADDRESS

**Taxpayer Identification Number:**  
**Form:**  
**Tax Year(s) Ended**

**CERTIFIED MAIL — RETURN RECEIPT  
REQUESTED**

**Person to Contact/ID Number:**

**Contact Numbers:**  
Telephone:  
Fax:

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, please sign and return the enclosed Form 6018, Consent to Proposed Action - Section 7428. If you have already given us a signed Form 6018, you need not repeat this process. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, The Examination Process, and Publication 892, Exempt Organizations Appeal Procedures for Unagreed Issues, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination



EXPLANATIONS OF ITEMS

Schedule number or exhibit

Name of taxpayer

ORG

Tax Identification Number

EIN

Year/Period ended

December 31, 20XX;  
December 31, 20XX; and  
December 31, 20XX

LEGEND

ORG - Organization name      XX - Date      EIN - EIN      website - website  
Address - address      City - city      State - state      CPA - CPA      CO-1 = 1<sup>st</sup>  
COMPANY      DIR-1 & DIR-2 - 1<sup>st</sup> & 2<sup>nd</sup> DIR

**Issue:**

Whether the ORG qualifies for exemption under Section 501(c)(3) of the Internal Revenue Code.

**Facts:**

The ORG ("Foundation") was incorporated in the State of State on August 26, 20XX. The Foundation was recognized as exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code and issued an advance ruling letter on December 17, 20XX. The examination was initiated as a result of information received that the foundation held a large raffle fundraiser in 20XX and no Form 990 or information returns were filed for that year (see exhibit A).

On October 13, 20XX a telephone call was placed to the Executive Director, DIR-1 at the phone number listed on the foundation website. The phone number was no longer in service. On the same date appointment letter 3611 and information document request 1 was sent out requesting an examination for the calendar year ending December 31, 20XX at the IRS office located at Address, City, State for November 3, 20XX at 9:30 am. This letter was sent to the address for the foundation which was listed on their website (see exhibit B). No representative for the foundation showed up for the appointment or made contact by phone, fax or letter.

On November 18, 20XX appointment letter 3611 and information request 1 was sent out requesting an examination for the calendar year ending December 31, 20XX at the IRS office located at Address, City, State for December 10, 20XX at 9:30 am. This letter was sent certified mail to the address listed for the agent of the foundation- DIR-1, according to the State Secretary of State records (see exhibit C). The certified mail receipt was signed by DIR-1 on November 20, 20XX. No representative for the foundation showed up for the appointment or made contact by phone, fax or letter.

Forms 990-EZ for the calendar years December 31, 20XX, December 31, 20XX and December 31, 20XX were received by the      Service Center on December 15, 20XX.

On February 11, 20XX a 30-day letter which proposed revocation of the Foundation's status under IRC 501(c)(3) of the Internal Revenue Code was mailed certified to the organization. The mail was refused by the foundation and returned by the post office on March 23, 20XX.

Form 2848 Power of Attorney was received on April 7, 20XX from CPA's CPA and CPA.

**EXPLANATIONS OF ITEMS**

Name of taxpayer	Tax Identification Number Year/Period ended EIN
<b>ORG .</b>	December 31, 20XX; December 31, 20XX; and <u>December 31, 20XX</u>

On April 9, 20XX appointment letter 3611 and information request 1 was sent out requesting an examination for the calendar years ending December 31, 20XX, December 31, 20XX and December 31, 20XX at the IRS office located at Address, City, State for April 26, 20XX at 9:30 am (see exhibit D). This letter was sent certified mail to the Foundation address listed on the Forms 990-EZ filed and to their CPA. The certified mailed receipt for the letter sent to the CPA was signed on April 13, 20XX. The certified mail receipt for the letter sent to the Foundation was signed by DIR-2 on April 17, 20XX.

On April 23, 20XX CPA notified the agent that he would be mailing documentation in response to the April 9, 20XX letter to the IRS office. A cover letter and the following response to the Information Document Request No 1 was received on April 27, 20XX.

	<u>Request</u>	<u>Response</u>
Request 1- Organizing <u>Documents</u>		<u>Articles of Incorporation and Bylaws submitted</u>
Request 2- <u>Exemption Letter</u>		<u>Copy of Exemption Letter 1045 dated December 17, 20XX submitted</u>
3- <u>Interview</u>		<u>If after reviewing the attached documents further Request discussion is needed, please contact us.</u>
Request 4- Newsletters,		<u>Copy of Scholarship Fund and Project Hype program</u>
<u>Brochures, etc</u>		<u>materials Request 5- Meeting Minutes To our knowledge, documents unavailable.</u>
Request 6- <u>Contracts, leases etc</u>		<u>To our knowledge, documents unavailable.</u>
Request 8- <u>Financial records</u>		<u>Request 7- Correspondence To our knowledge, documents unavailable.</u>
Request 9- Auditors financial <u>statements</u>		<u>Copy of CO-1 account statements for 20XX, 20XX and 20XX and UBS account statement for 20XX</u>
Request 10- <u>Returns</u>		<u>To our knowledge, no audited financial statements were prepared.</u>
Request 11- Raffle Activity <u>Documentation</u>		<u>Copy of Forms 990-EZ for 20XX, 20XX and submitted</u>

To our knowledge, no raffle activity was conducted.

**Activities and Operations**

No officer of the organization submitted to an interview of the activities and operations of the Foundation.

## EXPLANATIONS OF ITEMS

Name of taxpayer	Tax Identification Number	Year/Period ended
<b>ORG</b>	EIN and	December 31, 20XX; December 31, 20XX; December 31, 20XX

### INCOME

The Forms 990-EZ reported gross receipts of \$ in 20XX, \$ in 20XX and \$ in 20XX.

Income per the books and records was determined from the deposits and the dividends posted to the CO-1 account statements (see exhibit E). The account statements did not show the source or type of income which made up each deposit.

	20XX	20XX	20XX
<b>INCOME</b>			
Deposits			
Dividends			
<b>TOTAL</b>			

### EXPENSES

The Forms 990-EZ reported expenses of \$ in 20XX, \$ in 20XX and \$ in 20XX.

Expenses per the books and records was determined from the withdrawals, transfers of funds, checks written and FMA Card charges posted to the CO-1 account statements (see exhibit F). The account statements did not show who made the withdrawals and the purpose for the withdrawn funds. The statements did not show to whom the transfers of funds were made and the purpose for the transferred funds. The statements listed checks written and amounts, and did not show the purpose of the check written. The statement listed purchases made with the FMA card and did not show the purpose of the expense. No receipts, invoices or other documentation of the expenses was provided.

	20XX	20XX	20XX
<b>EXPENSES</b>			
Withdrawals			
Checks written			
FMA Card			
<b>TOTAL</b>			

**EXPLANATIONS OF ITEMS**

Schedule number or exhibit

Name of taxpayer	Tax Identification Number	Year/Period ended December 31, 20XX; December 31, 20XX; and December 31, 20XX
<b>ORG</b>	EIN	

**Law:**

Internal Revenue Code section 501(c)(3) exempts from Federal income tax: corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Treasury Regulation section 1.501(a)-1(c) defines a private shareholder or individual for section 501 purposes as those persons having a personal and private interest in the activities of the organization.

Treasury Regulation section 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treasury Regulation section 1.501(c)(3)-1(b)(1) states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treasury Regulation section 1.501(c)(3)-1(c)(1) states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treasury Regulation section 1.501(c)(3)-1(c)(2) states, in part, that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.



**EXPLANATIONS OF ITEMS**

Schedule number or exhibit

Name of taxpayer	Tax Identification Number	Year/Period ended
ORG	EIN	December 31, 20XX; December 31, 20XX; and December 31, 20XX

Treasury Regulation section 1.501(c)(3)-1(d)(1)(i) provides that an organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

- (a) Religious,
- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

Treasury Regulation section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

IRC § 6001 provides that every person liable for any tax imposed by the IRC, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

IRC § 6033(a)(1) provides, except as provided in IRC § 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Treas. Reg. § 1.6001-1(a) in conjunction with Treas. Reg. § 1.6001-1(c) provides that every organization exempt from tax under IRC § 501(a) and subject to the tax imposed by IRC § 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits, or other matters required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by IRC § 6033.

Treas. Reg. § 1.6001-1(e) states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.



Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>		Schedule number or exhibit
Name of taxpayer  <b>ORG</b>	Tax Identification Number  EIN	Year/Period ended December 31, 20XX; December 31, 20XX; and December 31, 20XX	

Treas. Reg § 1.6033-1(h)(2) provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and IRC § 6033.

\*-*Rev. Rul. 59-95, 1959-1 C.B. 627*, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of IRC § 6033 and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

### **Government Argument:**

The IRC § 501(c)(3) tax exempt status of the ORG ("Foundation") should be revoked because it has not established that it operated exclusively for a tax exempt purposes.

An organization described as a public charity under IRC 501(c)(3) must meet both the organizational and operational test and not permit the net earnings to inure to the benefit of private individuals. The organizational test consists of a review of organizing documents to determine the stated purpose is exclusively charitable, educational, or religious within IRC 501(c) (3) and upon dissolution the assets are dedicated to charitable purposes.

The operational test consists of a review of activities and operations to ensure the organization meets the requirements for exemption under IRC 501(c) (3). This is done through interview(s), tours of facilities, and review of books and records including but not limited to governing instruments, minutes, publications, and financial records. The conduct of interview(s), a review of board/committee minutes and printed materials are used to determine activities conducted, prohibited activities conducted, activities that generate unrelated business income, proposed activities, transactions with related officers and entities. The financial records are used to reconcile the Form 990 to the organization books and records, verify income, expenses, assets and liabilities. The income is reviewed to determine the source, whether it is generated from an exempt activity or unrelated business activity, or whether it is generated from a related party and may result in inurement. The expenses are reviewed to determine if they were expended for exempt purposes, prohibited activities or if they inured to the benefit of officers of private individuals.

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>		Schedule number or exhibit
Name of taxpayer  <b>ORG</b>	Tax Identification Number  EIN	Year/Period ended December 31, 20XX; December 31, 20XX; and December 31, 20XX	

The only description of activities provided was printed material for a scholarship program and a program called Project Hype. It is not possible to determine from the material whether the activities were proposed or conducted activities. Also it cannot be determined how the programs were operated to accomplish the exempt purpose of the Foundation. The important questions of *Who, What, When, Where, Why and How* have not been answered. The Foundation has not complied with the interview or submitted board of director/committee minutes for review which are a primary audit technique to determine whether an organization is operated exclusively for purpose exempt under IRC 501(c) (3).

The only financial records provided were account statements and the income and expenses from these statements does not reconcile to the Forms 990-EZ. The source of income and the type of income — (i.e. contributions, fundraising, unrelated business income) cannot be determined from deposits. There is no documentation of to whom the withdrawals and transfers of funds were made. Additionally there is no documentation as to the purpose for which the withdrawals transfer, of funds, checks written and FMA Card charges were disbursed. The information provided does not show that the funds were generated and expended for an exempt purpose under IRC 501(c) (3), and did not inure to the benefit of private shareholders or individuals.

### **Conclusion:**

In accordance with the above cited provisions of the Code and regulations under IRC §§ 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain recordkeeping requirements. An organization must also make available information required by the Internal Revenue Service for the purpose of determining if other returns were required to be filed and inquiring into its exempt status.

The Foundation received three requests for examination and has not sufficiently complied with the requests for information to allow the Internal Revenue Service to determine whether the Foundation qualified for exempt status under IRC section 501(c)(3) during the years under examination.

Accordingly, the Foundation's exempt status is revoked effective January 1, 20XX.

Contributions to the Foundation are not deductible under IRC § 170 after January 1, 20XX.

You are required to file Income tax returns on Form 1120. These returns should be filed for the tax years ending December 31, 20XX and for all tax years thereafter.